REMARKS/ARGUMENT

Claims 1-33 are pending. Claims 1, 10, 16, 17, 18, 19, 26 and 30 are independent.

The Examiner has rejected all of the claims under 35 U.S.C. 103 over Togher et al. in view of techniques not shown in any cited prior art but which are alleged by the Examiner to exist by the taking of official notice. The Examiner's rejection on these grounds is respectfully, but strenuously, traversed.

ATTY not to rely on Road-cited

In particular, in the previous response, Applicants pointed out with particularity features of the independent claims that are neither taught nor suggested in Togher et al. In response to these arguments, which are maintained and incorporated herein by reference, the most recent Office Action used official notice to supply the features not shown in Togher et al. However, as will be set forth below, the rejections are improper and fail to set forth a prima facie case of obviousness.

In the rejection of claim 1, the Examiner conceded that Togher et al. does not teach either a means for offering to the identified counterparty a further trade at the same price as the executed deal, or a means for executing a further trade that is irrespective of whether of not the further trade exceeds one or both of the credit limits assigned by each of the parties to the trade to the other in place when said executed deal took place. However, in spite of the fact that no prior art references teaching either of these features was identified in the Action, the Examiner took official notice that each of these features is old and well known in the art. The use of official notice in this manner is improper.

In accordance with U.S. Patent Office practice, the Examiner can only rely upon such official notice where the facts asserted are "capable of instant and unquestionable demonstration as being well-known". MPEP Section 2144.03A. For this reason, "in limited circumstances, it is appropriate for an Examiner to take official notice of facts not in

the record or to rely on 'a common knowledge' in making a rejection; however, such rejections should be judiciously applied." MPEP 2144.03.

The Office Action states that the recited means for offering and means for executing are old and well known in the art. However, the issue of whether the elements, categories, etc., are routine is exactly the type of thing that official notice may *not* be relied upon for. See MPEP 2144.3A ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and *are not amenable to the taking of such notice.*" Citing In re Eynde, 480 F2d 1364,1370 (CCPA 1973) (emphasis supplied).

In view of the fact that MPEP specifically states that official notice may *not* be used with regard to the state of the art, the Examiner has failed to establish even a prima facie case of obviousness. The Examiner is requested in the next Office Action to provide evidence, i.e., examples of actual prior art, that the recited means for offering and means for executing are found in the prior art. That is, the Examiner should introduce evidence to support these statements. Of course, such evidence should have been provided in the first place to support a finding of obviousness.

Further, even if it were deemed, for the purposes of argument, to be true that further trades are well known *in the abstract* (and Applicants make no such admission), that is not enough to support a rejection of claim 1. The features recited involve providing means for offering and means for executing the further trade *in an anonymous trading system.* However, in view of the fact that such anonymous trading systems are designed to keep the identities of trading partners anonymous, the teachings of Togher et al. would have *dissuaded* one of ordinary skill in the art from providing the recited further trade by the means for identifying, the means for offering, and the means for executing, since such features of claim 1 would be seen as going against the purpose of an anonymous trading system. For at least this additional reason, no prima facie case of obviousness has been set forth in the Office Action in connection with claim 1.

Claims 2-9 and 14 depend from claim 1 and include all the limitations found therein. These claims recite additional limitations which, in combination with the limitations of claim 1, are neither disclosed nor suggested in the art of record. Accordingly, these claims are also believed to be in condition for allowance.

Among the limitations of independent claim 10, which are neither disclosed nor suggested in the art of record are:

> "the deal execution means further identifying the counterparties to each other on completion of the deal; and
>
> means for permitting a party to an executed deal to provide a non-anonymous offer or request for a further deal with the for a counterparty to the executed deal at the same price, the means for permitting including means for adjusting the counterparties credit limits with one another by an amount equal to the value of the deal."

As was pointed out in the previous response, there is no disclosure in Togher et al. of any structure for permitting a party to an executed deal to provide a *non-anonymous offer or request* for a further deal with a counterparty to the executed deal at the same price as required by claim 10. This was conceded in the current Office Action.

However, once again, the Examiner relied upon official notice to provide these features, without identifying where they could be found in the prior art. Since it is improper to use official notice to establish what is known in the prior art, i.e., the state of the art, see the reference to the MPEP above, the use of such official notice is totally improper and no prima facie case of obviousness has been established for at least this reason. The Examiner is requested to provide prior art that actually teaches these features. In view of the foregoing, claim 10 believed to be in condition for allowance.

Moreover, even if it were deemed, for the purposes of argument, that non-anonymous offers are known (and Applicants make no such admission), that would not be enough to support a rejection of claim 10. The features recited in claim 10 relate to a system that has the above-mentioned features of claim 10, useful for making the non-

anonymous further deal, *in combination with* a means for matching anonymous bids and offers.

However, in view of the fact that anonymous trading systems are designed to keep the identities of trading partners anonymous, the teachings of Togher et al. would have *dissuaded* one of ordinary skill in the art from providing the further trade by the deal execution means further identifying the counterparties to each other on completion of the deal and the means for permitting a party to an executed deal to provide a non-anonymous offer or request for a further deal with the for a counterparty to the executed deal at the same price, the means for permitting including means for adjusting the counterparties credit limits with one another by an amount equal to the value of the deal. For at least this additional reason, no prima facie case of obviousness has been set forth in the Office Action in connection with claim 10.

Claims 11-13 and 15 dependent from claim 10 and include all the limitations found therein. These claims recite additional limitations which, in combination with the limitations of claim 10, are neither disclosed nor suggested in the art of record and are also believed to be in condition for allowance.

Among the limitations of claim 16, which are neither disclosed nor suggested in Togher et al. are:

> "the broker terminal further effectuates a first order between a first and second trader, notifies the first and second trader of the respective identities of their counterparties, and, thereafter, when requested by at least one of the first and second traders, the broker terminal effectuates a second order between the first and second traders at substantially the same price as the first order regardless of the credit limits between the first and second traders."

As was pointed out in the previous response, Togher et al. does not first effectuate a first order between the first and second trader, notify the first and second traders of the respective identities of their counterparties, and thereafter (upon request of at

least one of the traders) effectuate a second order at substantially the same price regardless of credit limits between the first and second traders.

This point was conceded in the Office Action. However the Examiner once again relied upon official notice to provide this feature, without identifying any prior art to show the feature. As has been pointed out above, this is exactly the type of thing that official notice may not be used for, as is made clear in the portion of the MPEP quoted above. For at least this reason, the rejection is improper. The Examiner is requested to provide actual evidence to support the contention that the above feature is well known in the prior art.

Moreover, as in claim 1, there would have no motivation to have used the abovementioned features of claim 16 in an anonymous trading system, as is done in claim 16, for the reasons provided in detail in the discussion of claim 1. In fact, Togher et al. would have *dissuaded* one of ordinary skill in the art from adding the abovementioned features to an anonymous trading system. Accordingly, claim 16 is believed to be in condition for allowance.

Claims 20-22 dependent from claim 16 and include all the limitations found therein. These claims recite additional limitations which, in combination with the limitations of claim 16, are neither disclosed nor suggested in the art of record. Accordingly, these claims are also believed to be in condition for allowance.

The rejections of independent claims 17, 18, 26 and 30, as well as the claims dependent thereon, are believed totally improper for reasons substantially similar to those delineated above in connection with independent claims 1, 10 and 16. That is, in each case, while conceding that noteworthy features of the independent claims are not taught in Togher et al., the Examiner has nonetheless taken official notice that such features are well known, without identifying art to support that assertion.

As has been pointed out above, such use of official notice is not permitted. See the portion of the MPEP quoted above. Further, Togher would have *dissuaded* one of

ordinary skill in the art from combining the features that were the subject of the official notice with an anonymous trading system, for reasons set forth in sufficient detail above. For at least these reasons, no prima facie case of obviousness has been established as against independent claims 17, 18, 26 and 30, or the claims dependent thereon.

Among the limitations of claim 19, which are neither disclosed nor suggested in the art of record, are:

> "performing a second trade between the first and second trader through the anonymous trading system without regard to the trading limits."

As was pointed out in the previous response, Togher et al. performs a single trade, not two separate trades, and certainly does not disclose or suggest the desirability of first carrying out a first trade based on trading limits and then performing a second trade without regard to the trading limits. The Examiner took official notice that the feature of performing a trade without credit limits is old and well known in the art, without providing any evidence to support this position. However, as has been discussed above, the state of the art is inappropriate for the taking of official notice. Thus the rejection is improper.

Moreover, even if it were deemed, for purposes of argument, to be known, in the abstract, to perform trades without regard to credit limits, that would not be sufficient to support a rejection of claim 19. Claim 19 recites a method that includes *both* performing a second trade between the first and second trader through the anonymous trading system without regard to the trading limits and performing a first trade between the first and second trader based on bilateral credit limits. A proper rejection would also have to supply motivation to combine these features, since there must be a teaching or suggestion of claim 19 *as a whole*, not simply of the individual limitations thereof.

For at least the above, reasons, claim 19 is believed allowable.

In view of the arguments presented above and in previous papers, reconsideration and allowance of the application are respectfully solicited.

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Respectfully submitted,

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